EXHIBIT B

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Adv. Case No. 08-01789-smb

- x

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff.

v.

BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

Defendant.

- x

Adv. Case No. 10-04898-smb

- x

IRVING H. PICARD TRUSTEE FOR THE LIQUIDATION OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

Plaintiff.

v.

SAREN-LAWRENCE,

Defendant.

- x

- x

Adv. Case No. 10-04324-smb

- x

IRVING H. PICARD TRUSTEE FOR THE LIQUIDATION OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

Plaintiff.

v.

ROTH et al,

Defendant.

- x

U.S. Bankruptcy Court

One Bowling Green

New York, NY 10004

March 23, 2016

10:40 AM

B E F O R E :

HON STUART M. BERNSTEIN

U.S. BANKRUPTCY JUDGE

Hearing re: 08-01789-smb Defendants' Motion to Quash Subpoena, for Protective Order, and for Dismissal

Hearing re: 08-01789-smb Motion to take Deposition of Bernard L. Madoff

Hearing re: 08-01789-smb Application of Temporary Restraining Order and Stay of Enforcement of Subpoenas

Hearing re: 10-04898-smb Trustee's Motion to Compel Third Party to Comply with Subpoena

Hearing re: 10-04324-smb Motion of Chaitman LLP to Withdraw as Counsel to Barbara Roth

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: Please be seated. Good morning. Madoff.

MR. SHEEHAN: Your Honor, if you have a preference, we have two things this morning: the deposition of Mr. Madoff, and we also have a continuation of the order to show cause.

THE COURT: Yeah, I had --

MR. SHEEHAN: Well, there could be three things.

THE COURT: Well, actually I have three related motions regarding the enforcement of the subpoenas. I have the motion to withdraw as a lawyer for Barbara Roth, and I also have the Madoff deposition. Why don't we do the subpoenas first? Who represents the defendants?

MR. DEXTER: Good morning, Your Honor. Gregory Dexter here, Chaitman, LLP. I represent the defendants in this matter. I guess we'll proceed with our motion for a protective order and motions quashed. Although this motion, it really came before the Court by motion for the trustee to compel Valley National Bank to comply with --

THE COURT: Well, your motion really covers 11 cases and his motion only covers one, and that motion overlapped with your motion in that case, so why don't you go ahead?

MR. DEXTER: Yes, Your Honor. As we state in our brief, these subpoenas seek records that the defendants do

not dispute. And the trustee has a position on that.

THE COURT: What do you mean the defendants don't dispute?

MR. DEXTER: Well, if you look at the records that the subpoenas are actually seeking, which are from 2006 to 2009, all of the defendants have substantially admitted (indiscernible).

THE COURT: That is an incorrect statement. And I'll deal with the subpoenas individually, but I will tell you right now that with the possible exception of the Wilentz case, there are substantial disputes reflected in the responses to the request for admission.

MR. DEXTER: Well, Your Honor, I don't know how you'd like to proceed. Would you like to go through each one?

THE COURT: Tell me, you've made a motion, part of your motion is the motion to dismiss the complaints in these 11 actions. Tell me why I should dismiss them.

MR. DEXTER: Well, the motion to dismiss is based on the trustee's wrongful conduct, in essentially representing that he would hold the subpoenas in advance, providing the defendants an opportunity to answer the request for admit, and when some of those defendants did answer those requests to admit, the trustee nonetheless proceeded, and then in other cases, where the defendants

didn't even have an opportunity to answer their requests for admit, the trustee proceeded nonetheless.

THE COURT: But your motion is predicated on the violation of a court order. You rely on Rules 37(b) and 41(b) of the Federal Rules of Civil Procedure. What's the court order that was violated?

MR. DEXTER: The court order is that your ruling from February 19th, in which you memorialized the trustee's representation that he had made at an earlier hearing, which was that the trustee would hold the subpoenas in advance, he would provide the defendants an opportunity to admit their request for admissions, and then we would determine whether or not we would proceed or not.

THE COURT: But your motion is predicated on letters sent the day before, isn't it? On February 18th, the day before the order.

MR. DEXTER: The motion is predicated on a lot of representations that were made, and we're all aware that this is sort of a complicated procedural history.

THE COURT: I'll grant you that.

MR. DEXTER: So it wasn't just the fact that there was a letter a day before a motion or anything like that. But when you look at all these communications in context, and you look at what they state, that these communications are that the trustee was going to hold compliance in

advance, provide the defendants a meaningful opportunity to answer the questions --

THE COURT: Well, but in the case of Saren-Lawrence, the responses to the requests for admissions had already been served, so there was nothing to hold in advance of that point, was there?

MR. DEXTER: Well, at that point, the trustee could have said that we think these are insufficient for the following reason, can you please clarify this? There are procedures --

THE COURT: I don't think the trustee has to negotiate the answers. This is the second set of responses which you've served, and as I recall, colloquy, it was, that the trustee would stand down for 30 days, if the answers were admitted, fine, but if the trustee was dissatisfied with the answers, the trustee could proceed. On their face, the answers don't admit the transfers, do they?

MS. CHAITMAN: Your Honor, this is Helen Chaitman. May I be heard on this issue?

THE COURT: No, Ms. Chaitman, you said that you would listen, and if I had a question, I would ask you. I don't entertain oral argument on the telephone on these matters. Mr. Dexter is here and can answer the question.

MR. DEXTER: In Saren-Lawrence, the defendant states that she does not dispute the transfers from 2001 to

the present.

THE COURT: To the extent they're consistent with the accountant's records, right?

MR. DEXTER: Right, because that's all she has (indiscernible) --

THE COURT: So first of all, though, they're the records she gave to the accountant, and secondly, that requires the trustee to prove his case by proving what the accountant's records show. What is the admission to in that case? It's still a disputed issue.

MR. DEXTER: Well, the trustee either has those records from the accountant, or will have those records --

THE COURT: Why doesn't she get those records and either admit or deny the transfers? They're her records. Didn't she give the accountant the information regarding what she'd received, and what she deposited?

MR. DEXTER: Right, and to the extent that those records are consistent with what the trustee has, she has so indicated. And there are only three very minor areas of dispute. And those disputes would be resolved by the information that Valley National Bank has produced, or will produce. Therefore, there is no dispute.

THE COURT: That's what you said.

MR. DEXTER: That is why I say, but the records that Valley National has produced, or will produce, will

resolve these very minor dispute in the Saren-Lawrence case.

THE COURT: What about the other cases?

MR. DEXTER: Okay, we can take it one by one. In the Roman case, the defendants there do not dispute the deposits and withdrawals, as evidenced by the trustee's records from --

THE COURT: Yeah, but they denied the receipt of the $150,000 withdrawal on April 2nd, 2007, and the $125,000 withdrawal on March 19th, 2008. So how can you say they don't deny it?

MR. DEXTER: Your Honor, there are so many documents at issue here. I don't have a copy of those. Could you read that in context for me? Because it may be just that they have a problem with a term of (indiscernible), which is principal.

THE COURT: No, I understand the denial of the characterization of certain things as principal. That's not an issue that concerns me. But let me just see. I'm looking at -- this is Robert Roman's answers. Number 16, admit that the withdrawal from the account made on or about April 2, 2007 in the amount of $150,000 was received by Robert Roman. Answer, denied, see Answer Number 15. Number 22, admit that the withdrawal from the account made on or about March 19th, 2008, in the amount of $125,000 was received by Robert Roman. Denied, see answer to Number 21. And then he also

says --

MR. DEXTER: Could you explain what the answers are of 15 and 21?

THE COURT: Just a minute, just a minute. Then he also says, Request Number 27, admit that $410,000 in excess of principal was withdrawn from the account between December 11, 2006 and December 11, 2008. Answer, denied. Then he said the entire account consisted of principal, but then he said, moreover, the trustee has failed to credit the responding party with $140,000 made in deposits made into his account in the period following December 11th, 2006. So you put those into issue. You put the trustee's records into issue. You're saying that the two most significant withdrawals were never received, isn't that what it says?

MR. DEXTER: It's saying, please see Number 15, and please see Number 21.

THE COURT: So what does that say?

MR. DEXTER: Your Honor, could you tell me? I'm not sure, because quite honestly, I don't have that.

THE COURT: I think that's the defendant's theory, that she doesn't receive money that she uses to pay taxes, which I'm not quite sure I understand, but I'm -- particularly since I've been told they got refunds for these taxes. But look, what else?

MR. DEXTER: With respect to the Romans?

THE COURT: Next, which do you want to talk about next?

MR. DEXTER: Well, Your Honor, I think that the substance of their admissions is that they made everything from 2008 in 2008. They're not going to admit loaded request for admissions the trustee puts in. That would require the Romans to accept certain terms of (indiscernible) that the trustee knows are disputed, and the Romans can't really admit to anything more than that.

THE COURT: Okay, but nobody says they have to admit to something that they in good faith have to admit to. But then if they can admit to it, it's a disputed issue, and if it's the trustee's burden, the trustee will have to prove it. But they specifically deny the receipt of the $150,000 and the $125,000.

MR. DEXTER: I don't think they do. I think they dispute the way that it's characterized, because they have admitted all deposits and withdrawals from 2000 to 2008.

THE COURT: Okay, but we're arguing -- but the trustees said, admit you receive this money, and they say no. And it's a withdrawal that's reflected on the trustee's records.

MR. DEXTER: Right, admit that your received it for the benefit of --

THE COURT: That's a different question. I didn't

read you that question. That's another question that raises a legal issue, whether you receive money that you use to pay taxes. This is just a straight-out request for an admission that you receive the money. Let's go on to other orders.

MR. DEXTER: Wilentz.

THE COURT: Wilentz, I had an issue with the trustee on that one. When the trustee responds, but -- by the way, with the exception of Saren-Lawrence, all of these defendants have asserted a defense that I guess to the extent they were required by law or contract to pay the money over to a third party, they didn't receive it. Kind of, I guess, a conduit type of a theory. So doesn't that put all of the transfers out into question? As well as the transfers in, I guess.

MR. DEXTER: Well, Your Honor, the rules of federal procedure have never been that if you raise an affirmative defense because you're required to raise it in answer, otherwise it's waived, that the complaining party can subpoena any record they want, and get evidence of anything they want.

THE COURT: But why they can't get evidence related to that affirmative defense? Nobody forced you to assert it?

MR. DEXTER: Well, the evidence that they are seeking through these subpoenas would not be in any way relevant or helpful to getting that information.

THE COURT: Why not? They know the universe of outflows, and then they could ask the person in every case what was the basis of the requirement to make that payment. Were you holding it as a conduit? Were you an agent that received it for somebody else? You've raised that issue.

MR. DEXTER: Well, if they get the financial records, that's not going to give them the contract, that's not going to --

THE COURT: Well, but then they can ask the person about each withdrawal.

MR. DEXTER: But aren't there less burdensome ways to do that?

THE COURT: I don't even know what that defense means? What does it mean?

MR. DEXTER: It's our burden to prove that affirmative defense. And if we don't produced the evidence to establish that affirmative defense, it's going to be dropped.

THE COURT: But if you do, what do we do? Stop the trial at that point and now tell the trustee he can take discovery?

MR. DEXTER: No, because throughout discovery, any evidence that we're going to have to put on trial, we're going to have to produce. So before we get to trial, everyone's going to know whether we have the information to

establish these affirmative defenses or not.

THE COURT: Look, you asserted in most cases, something like 42 affirmative defenses. If you assert the defense, it raises the issues are encompassed in the defense, and discovery is appropriate in those issues. Nobody forced you to raise those.

MR. DEXTER: Discovery is appropriate, and throughout the course of discovery, we're going to produce the documents that support those affirmative defenses. We don't see why the trustee has to be granted the most burdensome remedy possible for us to establish those affirmative defenses.

THE COURT: How is that burdensome to you? You not being asked to produce anything.

MR. DEXTER: It's going to reveal personal financial records of the defendants, for 99 percent of the transactions are not going to be relevant to this case at all.

THE COURT: That may be true. We don't know that, but the question is who in the first instance is going to make that determination?

MR. DEXTER: Well, we think it should be a neutral mediator.

THE COURT: Why a neutral mediator?

MR. DEXTER: Well, I mean, that would more

appropriately protect the defendants' confidentiality interests. It would be exposed to thousands of people, it wouldn't be exposed to the trustee's hundreds of attorneys.

THE COURT: BUT the trustee has agreed to hold it in confidence, pursuant to the litigation protection order. Yes, it'll be seen by the trustee's attorneys, but so what? If you're going to show it to a third party, what's the problem of showing it to the trustee under a promise of confidentiality?

MR. DEXTER: Because once we produce these records to the trustee, then they're going to use that information to frame complaints against subsequent transfers.

THE COURT: It's a different issue.

MR. DEXTER: Well, it all comes together.

THE COURT: Just a minute. When Ms. Chaitman said she was going to make this motion, I said that one of the questions I had was if you even had standing to object to a third-party subpoena on the basis that it was seeking subsequent transfer information. Irrelevant information, let's just call it that. And that's not addressed in the motion.

MR. DEXTER: Well, there is standing to object when a subpoena seeks the personal financial records.

THE COURT: I agree with you on that, but now you're talking about something else. You're talking about

subsequent transfers (indiscernible) before the Court. You don't know who they are.

MR. DEXTER: It's clear that the defendants have standing. At that point, can they take the argument further? It's established they have standing, because these are personal records.

THE COURT: What does the law say about a party's standing to object to a third-party subpoena on grounds of relevance? Isn't there Second Circuit authority on this?

MR. DEXTER: On grounds of relevance? I know that the law says quite clearly that if the financial records are subpoenaed, you have standing.

THE COURT: That's a different issue, that's a privacy issue.

MR. DEXTER: Right, and that gives us standing.

THE COURT: You're talking, we started this by talking about subsequent transfer.

MR. DEXTER: Right.

THE COURT: So what is your standing to object to the discovery of subsequent transfer information, in this context?

MR. DEXTER: As Ms. Chaitman has already state don the record, and as I thought this Court was satisfied, we represent some of those subsequent transferees. And to protect --

THE COURT: We don't even know who they are.

MR. DEXTER: Well, I don't know how we could reveal that information.

THE COURT: Then how do I know you represent them?

MR. DEXTER: Because we make the motion to dismiss, which Your Honor granted.

THE COURT: There was only one case, I think, of all of them, in which there was a subsequent transferee issue, wasn't it? Which was one that?

MS. JENSON: Halpern, Your Honor.

THE COURT: Can I ask you something else?

MR. DEXTER: Certainly.

THE COURT: If the trustee couldn't get the subsequent transferee as a matter of discovery, couldn't he get it in a Rule 2004 examination?

MR. DEXTER: Your Honor, the trustee already had that opportunity. The trustee could have waited in filing these adversary proceedings. He could have obtained that information in a 2004 proceeding.

THE COURT: So why can't he do it now?

MR. DEXTER: As I understand, Rule 2004 is his opportunity to do that has passed, with the filing of the adversary suit.

THE COURT: Under the pending proceeding rule, that's only if can get the information as a matter of

discovery, to proceed the defendant's procedural rights. If you're telling me that he can't get the discovery in the proceeding, then the pending proceeding rule doesn't bar us getting the discovery through 2004, does it?

MR. DEXTER: I would have to defer to Ms. Chaitman on that one, if you would allow her, because being new to this case, that's just not something that I know, quite frankly.

THE COURT: Well, it's just a principle of law. It's not nothing specific to do with this case. All right. Anything else?

MR. DEXTER: Would you like to continue to proceed with each individual represented?

THE COURT: Well, all right. Wilentz, we were talking about Wilentz, and in Wilentz, I think Wilentz did admit the two transfers. I'll deal with the trustee on that one -- wait a minute. Let me see if I can find Wilentz. Oh, all right. Wilentz admits to the transfers, and there were no deposits, I think, during the relevant period. So we'll deal with the trustee on that one on why he needs more information. It may be because of the affirmative defenses, I don't know. Can I ask you a question about the Shapiro cases?

MR. DEXTER: Certainly.

THE COURT: And maybe the trustee has the answer.

As I understand it, Mr. Shapiro is deceased?

MR. SHEEHAN: Yes. Yes, Your Honor.

THE COURT: Are the initial transferees Mr. Shapiro individually, or some sort of entity in which he has an interest. I'm just wondering what the status of those proceedings are.

MR. SHEEHAN: I'm not as close to that as perhaps, some of my colleagues are here, but as I understand it, there are now new representatives being brought in to each -- and they're all family members, Your Honor.

THE COURT: So what's the -- I know that you never served request for admissions --

MR. SHEEHAN: No, we didn't.

THE COURT: Bin those cases. But you're seeking to enforce the subpoenas in those cases.

MR. SHEEHAN: That's right.

MR. DEXTER: My understanding is that that's actually reversed.

THE COURT: Well, I looked at your chart.

MR. SHEEHAN: I just got told that I was wrong.

THE COURT: According to the chart that I got from Ms. Chaitman in connection with the TRO, no discovery was served in the four Shapiro cases, and I did see a letter, a February 18th letter which sought to enforce, compel compliance with subpoena in those cases. What's the status

of those cases, what's the status of discovery?

MR. SHEEHAN: I'm sorry, Your Honor. I was listening to my colleague. I was right in my answer, by the way. We have served subpoenas in Shapiro.

THE COURT: And you're insisting on compliance with the subpoenas even though you haven't served requests for admissions?

MR. SHEEHAN: Well, our position is, and the reason I'm here today is for this reason. We're no longer serving requests for admissions in Helen Chaitman cases, because it's a waste of time. I don't have to serve request for admissions. If Your Honor recalls, the reason we serve requests for admissions goes back months. Your Honor announced from this bench that these are strict viability cases. Let's resolve these issues. We agree. We have served requests for admission on literally hundreds of defendants, and in many instances have achieved stipulations such as the Cohen matter before Your Honor.

We've worked out with hundreds of counsel all of these. This particular instance has turned into a series of motions that Your Honor has been entertaining over the period of three months. We're not advancing the cause of the case or otherwise. We will no longer service. We withdraw all requests for admissions to Mrs. Chaitman's clients, effective today, and she will never receive another request

for admission with regard to any other clients. We will rely upon the trustee's books and records.

And with regard to the subsequence, we will indeed, as Your Honor has just queried counsel on, we intend to use 2004 to get all the information you need. Every day that goes by, records are disappearing. That' what counsel is relying upon. Mrs. Chaitman even alluded to that at the last hearing that she knows those records are disappearing. So we need at this point, two things -- no more request for admissions, we get 2004 exams with regard to all of the banks so we can pursue, as we have every right to, under 550, subsequent transferees here. And I disagree, respectfully, that Rule 26 shouldn't bar us. I think we should be allowed under Rule 26.

THE COURT: No, no that's not the question. The question is the representation was made that you wouldn't do certain things before you had served requests for admission. So what you're telling me now, is on a going forward basis, you're withdrawing that (indiscernible).

MR. SHEEHAN: I am withdrawing that, because it got perverted, from my perspective, to the point where that became the issue, who did what when, as opposed to what answers we got. And the answers we got, respectfully, as Your Honor has found on (indiscernible) through the counsel this morning were meaningless. So they're not helpful to us.

We will go ahead and quite frankly, my intention is to move, in all those cases, for summary judgment. I don't think she has a valid defense to any of this. So we're going to expedite these cases, at this point.

THE COURT: All right. Okay, all right. Ms. Chaitman, I'll hear from you, since your name has come up in that last discussion, if you want to say anything.

MS. CHAITMAN: Well, I would, Your Honor. Thank you very much. First of all, it wasn't simply a representation made in chambers, it was an agreement that was made in chambers that was a tri-party agreement. You acknowledged it, and I acknowledged it, and therefore it wasn't something that the trustee in his whim, or in his convenience could withdraw. And then I think the conference was on January 28th, and then on February 16th, I may have the date wrong, but I think it was that date, in Court, and Your Honor on the record said which procedures should be followed, which was that the subpoena should be held in advance, until the defendants were given an opportunity to admit or deny the transcripts.

And that was an order that the Court entered, orally, in Court, and the trustee then decided that it wasn't applicable to the trustee. And now we hear that the trustee is changing the Court's order, and I just don't believe that the trustee has that power, Your Honor. I mean,

certainly I don't think the Court would accept my coming in and saying, "Well, Judge, you ordered something, but I've changed my mind about it, and I'm not going to comply with the order."

So that's number one, and number two, in the case of Mr. Lawrence, specifically, this is a situation where Valley National Bank has already produced all documents reflecting transfers to and from Madoff. So if that were the trustee's interest, he has it already. There is no dispute that those documents have been produced. In addition, Valley National Bank has no further records to clarify the three exceptions that Ms. Saren-Lawrence had in her response to the request to admit. So she basically conceded everything of which there's documentary evidence within Valley National Bank. And Jim Lawrence, who is my client, and who has standing, because it's a joint account, and his bank records have been subpoenaed, he certainly has standing to move to quash that subpoena to the extent that it seeks documents which have no relevance, other than to establishing whether he was a subsequent transferee.

THE COURT: Ms. Chaitman, can I just interrupt you about Mr. Lawrence, though?

MS. CHAITMAN: Sure.

THE COURT: Why wouldn't he be a subsequent transferee when the money is being put into the joint

account?

MS. CHAITMAN: Because if it was used by Helene to support herself, it was used for her. The subsequent transferee account, you'd have to trace how the money was used. The thing is --

THE COURT: No, you don't. Couldn't he have written a check on that account of the entire amount? Didn't he have dominion and control of everything in the account? They both did.

MS. CHAITMAN: Yes. He might not have used it. It's a question of who actually received the money, it's not a question of who had --

THE COURT: Aren't there cases that say a deposit like that into a joint account renders the joint owner a subsequent transferee?

MS. CHAITMAN: I'm not aware of any, Your Honor, and I think that the issue here, what the trustee is doing is quite extraordinary, and only exists in the context of Ponzi scheme, where you go after people who receive the money. And then it's a question of who actually enjoyed the benefit of the money. And I think that's we're going to into uncharted territory in the Second Circuit on this issue. But focusing simply on the subsequent transferee issue, certainly Mr. Lawrence has standing to object to the subpoena of all his bank records, which has no purpose other

than to permit the trustee to take discovery to which he's not entitled.

THE COURT: But aren't his bank records her bank records, because they have a joint account? In order words the trustee -- this is why I don't do this on the phone -- in other words, the trustee has not subpoenaed his personal records, he subpoenaed her records, and she happens to have a joint account with him.

MS. CHAITMAN: Right, but the trustee has gotten everything from those records the trustee is legitimately entitled to. And if the trustee is now saying he's going to use Rule 2004 to take discovery which is not permissible under the Federal Rules of Civil Procedure, that raises a very, very interesting question, because I don't believe that Rule 2004 can be used to circumvent the prohibitions that have been announced from the United States Supreme Court on. If Rule 2004 was appropriate --

THE COURT: What prohibition is that?

MS. CHAITMAN: The prohibition against taking discovery to frame a complaint. The trustee had --

THE COURT: But that's exactly what Rule 2004 is for.

MS. CHAITMAN: Yes, but once he files an adversary proceeding, I do not believe he's entitled to take ex parte discovery, and that's precisely what he's doing.

THE COURT: Well, it's an interesting question and I don't have it before us, but I raised it, as to whether or not the trustee could get 2004 discovery, on the theory that the discovery would not violate the pending proceeding ruling. I guess we can deal with that at a future date.

MS. CHAITMAN: But I think that we've come to a point, Your Honor, where that issue has to be briefed and determined, because I think --

THE COURT: Do you want me to treat his requests also a pursuant to Rule 2004?

MS. CHAITMAN: Well, I'd like to have the opportunity to brief it, Your Honor, because it hasn't been raised before today, and we haven't briefed that issue.

THE COURT: Fair enough. Anything else?

MR. DEXTER: Would you like me to continue each defendant here, Your Honor?

THE COURT: Sure. We talked about Wilentz, we've talked about Saren-Lawrence, we've talked about Shapiro -- now let me go to Roth. What's the status of Roth? Have you granted an extension of some sort?

MR. DEXTER: Can we just circle back to Shapiro for a sec?

THE COURT: No, no.

MR. DEXTER: All right.

THE COURT: And is it an open-needed extension, or?

MR. SHEEHAN: Yes, because Roth is in the process, obviously, Ms. Chaitman is both representing and withdrawing at the same time.

THE COURT: Well, right now, she's representing her.

MR. SHEEHAN: Yes, and in that context, we've agreed, as we did the last time we were together, that we're not going to do anything here until we have a resolution here today. So yes, it's extended without date until such time -- but in this case --

THE COURT: Why don't you do the same thing with Shapiro, since Shapiro apparently is going to have new representatives, and maybe new lawyers.

MR. SHEEHAN: Right. But what we're doing is we're withdrawing all the requests for admissions. There's no need for extensions. We're done. This is a waste of time.

THE COURT: So what extension are you granting in Roth?

MR. SHEEHAN: Well, the Roth extension is that we would not move forward on anything until such time as there is a resolution here today. We wouldn't move to compel, we wouldn't force the subpoenas, we wouldn't do any of those things, given them an opportunity to answer the requests for admissions. In this case they're without counsel, so they can't really answer them, so obviously there's no pressure

on them. But the point of the matter is, Your Honor, that there are no requests for admissions after today. And if I could be heard for one minute?

THE COURT: Well, let me let Mr. Dexter finish --

MR. SHEEHAN: All right. Because there are a lot of things said by Ms. Chaitman I disagree with.

THE COURT: All right.

MR. DEXTER: Just one thing on Shapiro. I think the understanding has been very confusing as to what has been served, what hasn't been served. Just so we're clear, the trustee has served subpoenas, but not requests for admission --

THE COURT: And he says he's not going to. He says because this will all just cause more litigation, and it hasn't produced everything, and it's a waste of time, and it's getting expensive for everybody.

MR. DEXTER: So is he going to hold compliance for the subpoenas in event?

THE COURT: No, no.

MR. DEXTER: He's going to proceed with the --

THE COURT: That's what he's saying.

MR. DEXTER: Well, of course we object to that, Your Honor, because it totally contravenes the entire understanding the parties had for the months of January through February, leading up to this motion practice. But

we'll put that objection on the record. And we think a court order should be entered preventing the trustee from proceeding with compliance with those subpoenas. He hasn't provided an opportunity to answer requests of admissions. He hasn't been able to, it's not his fault. But that proceeding with the subpoenas, compliance with subpoenas entirely contravenes the parties' understanding of the previous months.

THE COURT: But the trustee is arguing that this procedure that was set up that underlay the representation just hasn't worked.

MR. DEXTER: Well, I mean, we disagree.

THE COURT: Okay, so if I agree that it hasn't worked, do you think it's appropriate to simply let the trustee go out and enforce the subpoenas, without serving any further requests for admission? And if not, why not?

MR. DEXTER: Well, we don't think that the trustee should be entitled to serve theses subpoenas at all. I mean, they're seeking personal financial records that are highly irrelevant, that are highly --

THE COURT: That's a different issue. That's an objection to the subpoena. All I'm saying is you say that the trustee should not be able to enforce any subpoenas in the Shapiro cases, because the trustee has not yet served the request for admission, and there was a representation

that he would not seek to enforce the subpoenas until he did so, and there was time to respond, right?

MR. DEXTER: Correct.

THE COURT: Okay. The trustee now tells me, and I tend to agree, that this process has not worked. It hasn't accomplished its purpose, because it's been just additional litigation, letter-writing -- I have several motions before me now, and the value of the responses is such that they don't do anything. So why shouldn't the trustee, on that basis -- and putting aside the privacy issue for a minute -- be permitted to seek the bank records?

MR. DEXTER: Because the Court's ruling on March 9th that the Shapiro temporary restraining order was denied was based on the understanding that there was no outstanding discovery, and that was moot, or whatever procedural way you want to frame that, and now that's not true at all. And now he's --

THE COURT: There is no outstanding discovery.

MR. DEXTER: Right, but there's is no outstanding discovery, but there is no outstanding subpoena.

THE COURT: But there was no urgency at that point, because the trustee said he would stand down.

MR. DEXTER: Right, and we think that a court order should be entered that requires the trustee to stand down. And I don't disagree that --

THE COURT: Well, in other words, that among other things, says that the trustee is required to serve a request for admission in every case.

MR. DEXTER: Well, I think we already have a court order that says the trustee would serve a request for admission, allow the defendants a chance to respond, and would not proceed with enforcing compliance with subpoenas until that happened. And now the trustee is saying, "No, that really wasn't a court order, I could just change my mind."

THE COURT: Well, maybe he's just asking, to the extent it's a court order, to change it, because it just hasn't worked. There's been a frustration of the bencher, in commercial language.

MR. DEXTER: I would agree that this hasn't worked, but not because we haven't provided substantive answers for the relevant period, 2006-2008. We're not denying any of the relevant transfers. And in the cases that we are denying the relevant transfers, we will produce those records. There's no reason why the trustee should have all of this unnecessary personal financial information.

THE COURT: So you agree it hasn't worked? You just said that. But it's the trustee's fault.

MR. DEXTER: The reason why it hasn't worked is because the route has recanted his representations, changed

his mind, used tactics that are intentionally designed to deceive, and now when we do provide meaningful answers, the trustee says, "No, they're not good enough, you have seven days to comply with the subpoena."

THE COURT: Okay, so you're saying it hasn't worked because of something the trustee did. Is that what you're saying?

MR. DEXTER: Of the things that I just listed, yes.

THE COURT: If I agree with you that it hasn't worked, but it's because of the quality of the answers that the trustee has been getting, then would you agree that the trustee should not be bothered with serving any further requests for admission?

MR. DEXTER: Unless you look at these answers and you say that yes, it's true, from 2006 to 2008, (indiscernible).

THE COURT: You're not listening to me. I just said, assume that I conclude that the answers don't advance the case, they don't admit the transfers. Would you then agree that the trustee should be released from this procedure, which he agreed to follow, and not serve any more requests for admission? I mean, I guess he's still free to serve them, but you seem to agree that it hasn't worked.

MR. DEXTER: Your question, that's assuming that you think the answers that we have provided are not

sufficient.

THE COURT: Right, I'm allowed to ask hypothetical questions. So if you assume that, then what's the purpose of going on with this?

MR. DEXTER: Well, I mean, in the federal rule for requests for admissions, there are remedies contained in that rule, and if the trustee is not satisfied with certain answers, he can seek remedies in that rule. That rule doesn't say he could send a subpoena on all the defendants, and get all their personal bank records.

THE COURT: All right. Is there anybody else you haven't covered, that you want to cover?

MR. DEXTER: Halpern is another one.

THE COURT: Let me find Halpern.

MR. DEXTER: That's all right.

THE COURT: Okay, Halpern there are several accounts, or at least two accounts. For Account Number 1S0324, all the withdrawals were denied. And for Account Number 0118 -- I'm talking about the two-year period, now. I'm sorry, which were the accounts that issued them? Let me do this. I don't recall, in the 0118 account, were the withdrawals denied?

MS. CHAITMAN: Your Honor, may I be heard on that?

THE COURT: If you know the answer to it, yeah.

MS. CHAITMAN: I think I do. There are three

different trusts involved, and there are two trustees: one trustee for one trust, and another trustee for two trusts. The trustee for the respective trusts admitted the transfers. The trustee who was not a trustee for the specific trust lacked knowledge of any of the transfers, and therefore denied them. But the knowledgeable trustee for each trust admitted the transfers for, I don't remember the precise period, but it was at least 10 years, and it certainly encompassed the last two years.

THE COURT: I'm doing it by account, corresponding to the accounts that were questioned in the trustee's request for admission. In Account 0118, there was only $13,266 withdrawn within the two years. There were no deposits. And I think that the trustee admitted those, did he not, or did she not?

MS. CHAITMAN: The relevant trustee admitted them, Your Honor. I just don't remember which trust that is. I don't remember the account number.

THE COURT: I think after they admitted them into the other two, the withdrawals were denied, that's my recollection. Let's see --

MS. CHAITMAN: But that's because there was only one trustee for that trust.

THE COURT: They were certainly denied for the 0324 account. What about the 0086 account? Let's see. Oh, no, I

see that they were denied to the 0866 account. I'm looking at the responses, 15 -- the receipt for the account, the receipt of the transfers for those accounts were denied. All right. That leaves Barbanel.

MR. DEXTER: Barbanel has records of deposits from March 1999 on. Barbanel does not have any records of withdrawals. Barbanel is willing to allow the trustee to subpoena bank records to determine transfers to and from Madoff within a relevant time period. And Barbanel has no problem with that.

THE COURT: So he has no objection to the subpoena?

MR. DEXTER: Only if it's limited solely from transfers to and from Madoff, not in an attempt to obtain the entire universe of bank records.

THE COURT: I got it. All right. But he denies all of the transfers which admissions are requested, in the request for admissions?

MR. DEXTER: Just the withdrawals, because he doesn't have records of that, so how could he admit.

THE COURT: I'm not arguing with you about that, Mr. Dexter, I'm just saying he can't admit it, the trustee's got to get the information somewhere else, right?

MR. DEXTER: Right, the trustee should get all the relevant information, and not all entirely irrelevant information.

THE COURT: Okay, and who decides what's relevant and what's not relevant?

MR. DEXTER: Well, I mean, you look at the federal rules. You look at Rule 26, and the Court makes the determination. Is this really the best way to do this? Do we really want to allow the trustee to obtain all of these other records when there are numerous other discovery devices that would allow the same relevant information without the same intrusion?

THE COURT: Where else would the trustee get the information regarding the withdrawals in the Barbanel case? Can't ask Mr. Barbanel, because he doesn't know.

MR. DEXTER: Well, Mr. Barbanel could produce them, why not?

THE COURT: So why didn't he just admit the transfers, then?

MR. DEXTER: Because at the time, he didn't have the information. If it was a matter of --

THE COURT: So why didn't he amend his answers?

MR. DEXTER: It's probably a practical issue when you're dealing with, in some cases, 100 request for admission served against one defendant, there's only so much you can do. So anything that's relevant, Mr. Barbanel is happy to not contest the trustee's subpoena of, and if it would help things, he would do what he can to produce these

records. At this time, he doesn't have all the records that would be required for him to admit the expansive requests for admissions that the trustee has served on him.

THE COURT: All right. I think that covers all of the cases in which subpoenas have been served. If you're done, let me hear from the other side.

MR. DEXTER: Just one thing about the affirmative defenses, and let's go back to the Saren-Lawrence case. In that case, the only affirmative defense that's raised is the tax records, affirmative defense. And as has been made clear on the record, that defense on applies for taxes paid before 2003. The records sought in the subpoena are records in 2007, 2008, and 2009. So any records that would be produced in response to that subpoena would shed no light whatsoever on that affirmative defense.

THE COURT: Can I ask you a question, though? Why did she deny receipt of the money that was apparently withdrawn to pay taxes, when she got the refunds? How can she assert that as a defense, if she got a refund for those payments?

MR. DEXTER: Well, in that case, the affirmative defense wouldn't apply.

THE COURT: But I've had this conversation with Chaitman, I said, "Modify or withdraw the defense." It's still out there.

MR. DEXTER: Right, so I mean, that could be one remedy. The Court could say, unless Saren-Lawrence modifies that affirmative defense, then we will order compliance with the subpoena.

THE COURT: But I've said that already. I said it two months ago, I think.

MR. DEXTER: I mean, I think it's been clear on the record that that affirmative defense only exists prior to 2003. But whether it says that in the answer or not --

THE COURT: That's what you tell me, the simplest thing to do is just amend the answer.

MR. DEXTER: All right.

THE COURT: That would be -- that could be a simple remedy to that.

MR. DEXTER: Yeah.

THE COURT: Let me hear from the trustee. Thank you.

MR. SHEEHAN: Your Honor, I didn't come here today to go through all this. Quite frankly, I think her motion is baseless. There's been a lot of adjectives and adverbs tossed towards the trustee. I've no interest in going through them. I think they are groundless. Ms. Chaitman has no temerity whatsoever in personally attacking anyone she feels like it and gets away with it. So let's leave that as it is.

On the other hand, there's been a suggestion here that we've done something wrong. If Your Honor wants to go through each and every one of these, that's just not true. And I'll just give one instance. In January 27th, we're sitting here and the so-called representation is made, that somehow becomes an order of Your Honor, that we won't. We won't enforce the subpoena until we give them an opportunity to be heard.

The day before, our colleagues at the -- never can think of names --

THE COURT: Mr. (indiscernible) office.

MR. SHEEHAN: -- yes -- get served a subpoena. Why? That young woman was charged with contempt. Cavalierly, Ms. Chaitman comes to this court and then withdraws it. This isn't TV. You don't make an allegation and say withdrawn and that's it.

This is what's going on here. This is what has to stop. We don't agree with anything she has said about us. We've done that nothing wrong. While the press may be who she's playing to, we don't. We come to court. We give you our answers, and I think we've given you the answer to all her objections in our papers.

Let's get to the Rule 26 fiasco that she's created here. There's no basis in law for anything that she's saying. To suggest to Your Honor that we can't make any

discovery with regard to subsequence in the context of initial transferee cases is baseless. There's no case that holds that. She has none.

What she's doing is corrupting things. Let's walk through it. In (indiscernible), we have to have a plausible basis. Your Honor's very familiar with that, right? You rule against us. We say okay, how about discovery? What would Your Honor say to that? I'm not going to allow discovery. You don't even have a plausible basis for your complaint. You can't get discovery.

That doesn't apply here, yet that's the echo that we hear Ms. Chaitman. Ms. Chaitman seems to think that because in the omnibus case, she got one subsequent dismissed, that therefore that means we get no discovery on subsequents.

THE COURT: How can you get discovery? Putting aside the avoidance litigation order, which I have a question about, how do you get discovery in the adversary proceeding into an issue that's not in the case.

MR. SHEEHAN: Well, that's where I agree with Your Honor about 2004. But, but I think we get it before a jury and after. All right? We get it before in 2004. We get a jury for this reason. This reason is that who knows better, and what records better reflect who the subsequent transferee is than in that case?

And there's nothing in the law that suggests we have two weeks. Colonial Gas doesn't got that far. We don't have to avoid the initial transfer, it would seem to me, in order to wait and get discovery.

THE COURT: I agree with you, and I've had that case and Judge Rakoff had the issue where you don't have to -- well, first to void the initial transfer--

MR. SHEEHAN: Correct.

THE COURT: --to sue the subsequent transferee, but you haven't sued the subsequent transferee.

MR. SHEEHAN: And that's the reason why 'cause we don't know 'cause until we have this discovery, we don't find out. In the meantime, what Your Honor's allowing by not letting us use Rule 26 or suggesting that or adopting what Miss -- the records are disappearing. Did -- Congress intended that? I don't think so.

When they gave us 550, they didn't say, oh, you have to wait until you get the initial transferee, and that gives all those initials a fast opportunity to destroy records, get rid of them. You'll never find them. I don't think that's what Congress was doing, all right?

What Congress gave us under Rule 26 is the ability -- in this certainly germane to find out what they did. Just take the example of the husband and the wife. I was at work at Crummy, Gibbons, and O'Neal, and Andrew B. Crummy

told me the first place to look when you're dealing with a fraudster is the wife or the husband.

Rule number one.

THE COURT: You know what happened in the (indiscernible) case.

MR. SHEEHAN: Well, yes, I do.

THE COURT: Okay.

MR. SHEEHAN: But the bottom line is, is that where else are you going to look? It's a start, but there's no reason in the world why I shouldn't be able to go there. And, and this business of privacy that keeps popping up.

THE COURT: Let's move off the subsequent transferee issue 'cause I don't think that's standing to raise it in the context of the motion (indiscernible).

MR. SHEEHAN: I understand that, but I think we need clarity to be able to go forward or you -- Your Honor, you and I will be back here again and again--

THE COURT: Well, maybe -- okay.

MR. SHEEHAN: --as we were last week on trustee compensation.

THE COURT: You're not -- you are not gonna get it today because I don't think they have standing to even raise the issue.

MR. SHEEHAN: Okay.

THE COURT: So it's an academic discussion at this

point, and maybe you should just seek a Rule 2004 order, which is designed to get information to come out -- to commence adversary proceedings.

MR. SHEEHAN: I will do that without conceding that --

THE COURT: All right, far enough.

MR. SHEEHAN: -- we can't do it under Rule 26.

THE COURT: Well, it's not teed up. It's not teed up today because these are third party banks' appearance.

MR. SHEEHAN: Correct, I understand. So in any event, I think -- I am --

THE COURT: So let's move on to the privacy issues.

MR. DEXTER: The privacy issue, I think, is -- has been vexing the courthouse for years. It isn't new. That's one we have protective orders. We have highly confidential, where only the attorneys can look. We have confidential where our staff and others can look. This has been dealt with for years and years and years, and, you know, the heightened attention to it in this cyber world we live in today seems to give it an added value, which I think overstates the issue.

While we're really talking about here is that we get access to this, just as Your Honor order, by the way -- you know, it seems like a century ago -- when we were in

here in Cohmad, and we had the same reaction. And Mr. Badway wanted to filter this stuff and mark it up and redact it and do all kinds of things. And Your Honor quite correctly ordered no. It goes to the trustee. He's operating under a protective order. He is, yeah, a fiduciary. He's whatever. He's an officer of the court. He will abide by that order, and therefore, he gets access to it.

The same thing should happen here. There is no privacy issue. There is a privacy issue in the sense that we need to -- not a privacy issue, I should say, that would bar discovery. There's a privacy issue that must be paid attention to, and we have. We've done it the right way, and that should not bar us from going forward and getting all these records so that we can do our job as trustee.

Thank you, Your Honor.

THE COURT: All right. I'll give you the last word, Mr. Dexter.

MR. DEXTER: If I could, just with respect to Cohmad, that case is really not applicable to this dispute because the movant in that case who was moving to quash the subpoena was actually a defendant and actually was a subsequent transferee in that case. And in that case, the trustee had already satisfied Rule 8 pleading standards. In this case, the Rule 8 pleading standards are not

established, so that case does not apply.

THE COURT: Well, but my sense was that Mr. Sheehan was mentioning that in terms of how the privacy issue was dealt with.

MR. DEXTER: Right, and how the privacy issue was dealt with, and that was an objection that was raised. And I'm not sure that Your Honor on a mostly ruled on the privacy issue. I would --

THE COURT: Well, I essentially did by saying un-redacted records would be turned over to the trustee and they'd be held in confidence.

MR. DEXTER: Well, if you look at the facts of that case --

THE COURT: And I mean, I think I also said that the trustee should give, in that case, Mr. -- who is it Greenberg, or...

MS. JENSON: Mr. Greenberg.

THE COURT: Mr. Greenberg's attorney the records he got from the bank, and if there was a particular issue regarding what should be redacted, they should discuss it, but I would ultimately decide it rather than have a third party decided.

MR. DEXTER: The defendants in that case are not entitled, I would think, to the same level of privacy is in this case. In that case, those are people that were working

with Bernard Madoff to commit what they knew was a fraud. In this case, we have --

THE COURT: Well, they deny that.

MR. DEXTER: In this case, we have people who are entirely innocent investors, were the trustee is seeking all their personal bank records. In that case, you have someone who is a known subsequent transferee, who's a known defendant in the case --

THE COURT: You keep -- you know, you keep confusing the subsequent transferee issue with the privacy issue. They're two different issues. And you may have -- you certainly have standing to raise the privacy issue. I'm not sure you have standing to raise the subsequent transferee issue.

MR. DEXTER: Well, that's something we can certainly brief for the Court, but my --

THE COURT: I don't need to brief it. That's before me now. I need

MR. DEXTER: But my point -- sorry, Your Honor. Go on.

THE COURT: If you didn't brief it at this point, you know, what's further briefing gonna do? That's the issue raised by your motions, or the two issues raised by your motions.

MR. DEXTER: Well, we don't -- I don't think

anyone doubts that the defendants have the standings to raise these issues, at least with respect to the confidentiality. The question becomes do they have a standing to advance what is a clearly established principle of law--

THE COURT: Which, which principle is that?

MR. DEXTER: It's the one that's been repeated ad nauseam here. It's that you cannot use discovery to frame a complaint against subsequent transferees.

THE COURT: Got it. I think have a question for Mr. Sheehan.

MR. SHEEHAN: Yes, Your Honor.

THE COURT: I noticed that you did not respond to the aspect of the motion to dismiss the cases.

MR. SHEEHAN: I think it's groundless.

THE COURT: (indiscernible)

MR. SHEEHAN: Well, I did -- I do now.

THE COURT: All right. Thank you. You can sit down. The defendants in 11 adversary proceedings representative Chaitman, LLP, hereinafter Chaitman, have moved among other things to dismiss the adversary proceedings based on alleged violations of representations made to the Court by the trustee that he would not seek to compel compliance with a certain bank of subpoenas until 30 days after the trustee served request for admissions on the

defendants or proposed stipulations of fact. For the reasons that follow, the motions to dismiss are denied.

The defendants are good faith transferees of alleged fictitious profits. The trustee commenced adversary proceedings against the defendants to recover the fictitious profits up to the amounts transferred within two years of the December 11, 2008, filing date.

The trustee served subpoenas on the defendants' banks seeking disclosure of information relating to deposits and withdrawals during the three-year period beginning two years before the filing date and ending on December 31, 2009. The current dispute arises from the trustee's efforts to enforce the bank subpoenas.

By chambers conference on January 27, 2016, the trustee's attorney represented that while he had and would serve subpoenas because of concerns about spoliation of evidence, which had apparently occurred in one case, he would not seek to enforce the subpoenas until 30 days after he served either a proposed stipulation of facts or request for admissions relating to the transfers at issue in the adversary proceeding. If the defendant admitted the transfers, he would forgo enforcing the subpoena except to the extent that the bank records were also relevant to an affirmative defense asserted by the defendant.

The trustee's concession and certain actions

attributed to Chaitman generated additional letter writing to the Court and more litigation. The trustee accused Chaitman of contacting at least one bank to advise it not to comply with the subpoena.

Chaitman in turn move to told one of the trustee's attorneys in contempt for serving a subpoena the day before the chambers conference. Chaitman also accused the trustee of misrepresenting that he had served request for admission in adversary proceedings in which he had served subpoenas.

As a result, the Court held a conference on the record on February 11th, 2016. The Court reiterated the prohibition against contacting the subpoenaed banks directly and instant directed the parties to first meet and confer and if necessary, raise any issues with the Court.

The Court further stated on the record that the trustee was free to enforce the subpoenas in the absence if a protective order "transcript of February 11, 2016, hearing at 13", and if necessary, move to compel the compliance Id. at 14.

Finally, the Court confirmed the trustee's commitment that he would not seek to enforce any bank subpoenas until 30 days after he delivered a proposed stipulation of facts or requests for admission, Id. at 14 to 15.

On or about February 18th, the trustee wrote to

several of the banks regarding the subpoenas previously served in the Alpern, Barbanel, Roth, Shapiro, and Saren-Lawrence cases. Each letter referred to the Court's direction that the trustee could enforce the subpoena absent a protective order and demand compliance by February 25. See declaration of Helen Davis Chaitman dated February 26, 2016, Exhibit 3.

As of February 18, 2016, and with one exception, the defendant's time to respond to previously served requests for admission had not expired, and in fact, no request for admission had been served in the four Shapiro cases. The one exception I mention was Saren-Lawrence, who had served her initial responses to trustee's request for admissions in December and had served amended responses on February 3rd.

Furthermore, the trustee had not served any -- as I mentioned, any requests for admission in the four adversary proceedings relating to Shapiro, who is deceased, although he served thank subpoenas in those cases and insisted on compliance.

On February 26th, Chaitman moved, pursuant to rules and 37(d) and 41(b) of the federal rules of civil procedure, to dismiss the cases. She argued that the trustee had violated his own representations to the Court and the Court's order of the February 11th hearing that he

should -- that he would not insist on compliance with the bank subpoenas before the defendants in the adversary proceedings had the opportunity to either admit the facts relating to the deposits and transfers in response to requests for admissions.

The defendant's motions to dismiss suffer from several fatal defects. Rule 37(d) authorizes a Court to impose sanctions against a party for its failure to comply with an order compelling discovery. Rules 41(b) authorize a court to dismiss an action for failure to comply with a court order. Dismissal under Rule 41(b) is a drastic remedy that is committed to the Court's discretion (indiscernible) federal practice section 41.5[3] and [4] (3rd edition 2014).

Chaitman has not identified a court order that the trustee supposedly violated. The theory is that he violated a representation, to wit that he would not enforce a subpoena until 30 days after he served a proposed stipulation of facts or request for admissions.

The defendants have not cited any authority supporting a dismissal for violating representation, and if the trustee have done so, the Court would follow the less drastic approach of quashing the subpoena if it was appropriate.

Next, the Romans and Wilentz have not produced letters demanding compliance with the subpoenas in these

cases -- in both cases. Hence they fail to identify any conduct that allegedly violated the direction of the Court. In addition, as I mentioned, the defendant in Saren-Lawrence served her amended responses on February 3rd, so any prohibition or agreement regarding a stay of enforcement of the subpoena had expired by February 18th.

In any case, the trustees insistence on compliance with the bank subpoenas did not violate the Court's order were justify a refusal of -- a dismissal of the adversary proceedings. At the February 11th hearing, the Court stated that the banks were required to comply with the subpoenas, to which they did not object on their own account absent a protective order.

Hence the trustee was free to demand compliance, and it was incumbent upon the defendants to move for a protective order and/or to quash the subpoenas. Nevertheless, the Court's statement on February 11th appeared to be inconsistent with the trustee's representation that he would not seek to enforce the subpoenas until 30 days after he served a request for admissions or after he received unsatisfactory responses.

Except for the Saren-Lawrence case, the defendant's time to respond had not expired when the trustee wrote his February 18th, 2016, letters demanding compliance by the banks. The Court's statement at the February 11th

conference that the banks must comply with the subpoenas absent a protective order was not intended to relieve the trustee of the representation he had made to the Court.

Furthermore, it was not intended to relieve the parties of the requirements memorialized in the order signed on February 19th to meet and confer, seek a court conference if they would not agree, refrain from contacting the banks until any -- or refrain from contacting the banks until any disputes were resolved. In addition if a conference was requested, the Court -- the order stayed dispute of discovery pending a resolution of dispute.

Given the confusion, sanctions against the trustee are not appropriate. The defendants in Saren-Lawrence Barbanel, Roman and Wilentz have served their responses, and the trustee is not insisting on compliance pending the disposition of the motions to quash what -- a protective court order or a protective order.

Roth has not responded to the request for admissions, and Chaitman is seeking to withdraw her -- withdraws her counsel. The trustee has explained it wants time to respond, although he has now was drawn the request for admissions. And as I mentioned, he hasn't even served the request for admissions in the four Shapiro cases.

The Court we'll address have the various the subpoenas to the extent it hasn't done, so in connection

with the motions to quash, but will not dismiss the cases. The defendants have moved to quash the bank subpoenas and Mr. Lawrence has moved for protective order and to quash the subpoena. The trustee has agreed to await the determination of the Court before seeking any further steps to compel compliance with the bank subpoenas, and that is sufficient. Accordingly, the motions to dismiss, pursuant to Rule 37(b) and Rule 41(d) are denied.

Prior to turning to the specific subpoenas, the Court will first address certain general issues that apply to all or mostly all of the motions to quash and/or further protective order.

First, the motions to quash are not untimely or alternatively, the defendants have good cause -- have shown good cause for not moving sooner. The parties were required to meet and confer and then seek a conference with the Court, before filing formal discovery motions. Strict adherence to the timing requirements advocated by the trustee would eviscerate the remedial purposes of the meet and confer requirements. The Court conducted several conferences and it was only at the February 11th hearing that it authorized the trustee to seek compliance with the subpoenas in the absence of a protective order.

One week later, by letters dated February 18th, the trustee insisted on compliance in many of the cases by

February 25th, only one week after the letter. His letters dictated the timing of the motions and the defendants filed a motion to quash the subpoenaed and for protective on February 26th.

Second, the defendants cannot quash the subpoenas on the basis that the bank disclosures might (indiscernible) subsequent transfer (indiscernible) information. They argue that the information is irrelevant, either because the complaint did not assert a subsequent transfer claim, or if they did, the claim was dismissed.

Federal Rule of Civil Procedure 45(d)(3) sets forth the grounds to quash or modify a subpoena. It states, in relevant part, that the Court must quash or modify subpoena that, open quote, "requires disclosure of privileged or other protected matter," period, end quote. Open quote, "In the absence of a claim of privilege, a party usually does not have standing to object to a subpoena directed to a non-party witness," period, end quote. Langford versus Chrysler Motors Corporation, 513 F.2d 1121, 1126, Second Circuit, 1975.

Accordingly, a party lacks standing to challenge subpoenas issued to non-parties on grounds of relevancy or undue burden. Universitas Education, LLC versus Nova Group, Inc., 2013 Westlaw 57892, 5, (SDNY January 4th, 2013) (collecting cases). The defendants, therefore, lack

standing to quash subpoenas because the bank records contained irrelevant -- on the theory that the bank records contained irrelevant subsequent transfer information.

Moreover, the defendants have put subsequent transfers into issue through their affirmative defenses. Every defendant asserted that he or she was entitled to a (indiscernible) or equitable adjustment to the extent he or she paid taxes on fictitious profits. Judging from the responses to the requests for admissions, several of the defendants paid the taxes from the same accounts in which they deposited their withdrawals from BLMIS.

The defendants contend that they are no longer asserting this defense for any period after 2003, because the government granted them relief, and refunded the part of the tax payments attributable to the fictitious profits. However, the defendants have not modified or withdrawn this defense, despite the Court's admonition to do so.

More generally, every defendant, except for Saren-Lawrence has asserted the defense that open quote, "there can be no liability of any recipient of funds, who, as a matter of law or contract was required to transfer any portion of the fund to a third party," closed quote. This defense implies that these defendants intend to argue that they lack dominion and control of some of the BLMIS withdrawals that they subsequently transferred.

Third, the defendants have standing to object to the third party subpoenas on privacy grounds, but bear the burden of persuasion as to the parties seeking to quash the subpoenas. Concord Boat Corporation versus Brunswick, 169 FRD 44, 48, (SDNY, 1996). While Courts have recognized that an individual has a privacy interest in his personal financial information, In Re: Glitnir, G-L-I-T-N-I-R, Bank 2011 Westlaw 3652764, 5 (Bankruptcy, SDNY, August 19, 2011) (collecting cases), the right to privacy is not absolute, open quote, "When a subpoena seeks the production of an individual's personal financial information, the Court must balance the relevance of the information sought against the intrusion into the affected individual's privacy interest," period, closed quote, id.

Unlike the portion of the administrative subpoena quashed in McWane versus FDIC. F.3d, 1127, (Second Circuit 1995), a case cited by the defendants, the trustee is seeking the defendants own relevant personal financial information. McWane upheld the subpoenas to that extent.

The bank information is plainly relevant because the trustee is seeking to recover transfers from BLMIS to the defendants and the defendants presumably deposited the transfers into their bank accounts. Furthermore, the information is not duplicative of the trustee's records, because the defendants have challenged the accuracy of the

trustee's records. If the defendants don't believe the BLMIS records are accurate, I may not either. In that case the trustee may have to prove his case, through the defendants' bank records.

Even if the defendant does not dispute the accuracy of the BLMIS records, the defendants' refusal to admit the transfers makes them a disputed fact the trustee must prove through other evidence. The trustee is entitled to the bank information to prove the fact that the transfers will meet the affirmative defenses.

The counterbalance against the relevancy of the records is the defendants' general assertion of a right to privacy in their financial records but nothing more. Given the importance of the bank records to the trustee's fraudulent transfer claims, and the defendants' denial of some or all of those transfers, they have failed to sustain their burden to show that their general privacy concerns outweigh the relevance of the bank information. Moreover, the trustee has agreed to treat the bank information as confidential thus preventing their disclosure to the world at large.

This conclusion also applies to the request for a protective order filed by James Lawrence, the spouse of the defendant Helene Saren-Lawrence. The trustee did not subpoena Mr. Lawrence's bank records, rather, he subpoenaed

his wife's bank records at Valley National Bank, and Mr. Lawrence and his wife are the joint owners of the account, by their own choice. Mr. Lawrence admits that his wife's Madoff-related transfers, including the tax refunds relating to liabilities she still seeks to offset, were deposited into the joint account, declaration of James Lawrence, in support of motion for a protective order, dated February 22, 2016 at Paragraph 3.

The defendant has not admitted to any of the transfers from Madoff. Her responses to the request for admissions only admit to the transfers to the extent they are consistent with the records subpoenaed from her accountant. This requires the trustee to prove the transfers through the accountant's records, which contravenes the very purpose of request for admission, and is effectively a denial of the transfers.

Furthermore, Valley National's production of records redacted only to show what it says -- what it contends are only the Madoff-related transfers and withdrawals, see id., is no substitute for an unredacted production. Redactions breed suspicion and may deprive the reader of context, In Re: State Street Bank and Trust Company, Fixed Income Funds Investments Litigation, 2009, Westlaw 1026013, 1 (SDNY April 8, 2009). They are only permissible to protect privileged, John Wiley and Sons, Inc.

versus Book Dog Books, LLC, 298 FRD 184, 186 (SDNY 2014), and the Court has concluded that the relevance of the records outweighs any general privacy concerns.

The defendant's suggestion that they or a third party redacted documents is therefore unacceptable. Moreover, if the defendants are willing to show the records to show the records to a neutral third party, there is no reason why they shouldn't show them to the trustee who will hold them in confidence. If the defendants seek the redaction of specific records turned over to the trustee, the defendant can raise any redaction request based upon privacy concerns directly with the Court.

Now with respect to the specific subpoenas, I've already dealt with the subpoenas in Saren-Lawrence. As I've suggested, the admission to the transfers to the extent they're consistent with Ms. Saren-Lawrence's accountant's records is just not an admission at all, and as I said would require the trustee, essentially, to put the accountant on the stand, ask him about the records to prove the transfers. That doesn't accomplish the purpose that the transfers were intended to accomplish and for that reason, whatever the trustee's representations were about holding off compliance, the responses don't admit the transfers, so the trustee is free to compel compliance with the subpoenas.

With respect to the Romans, in both cases I note

that they denied transfers of $150,000 and $125,000, they denied receipt of those transfers, they didn't simply deny the transfers. So they put those transfers in issue. They've also stated that they did not receive credit for $140,000 worth of deposits that they made so those deposits are also at issue because they would obviously affect the trustee's computation of fictitious profits and the amount that he could ultimately recover.

In addition, like all the other defendants, except for Saren-Lawrence, that have raised this affirmative defense, that somehow money they got from BLMIS, that they were required to transfer by contract or other -- or by law, was not itself a receipt of money, puts the subsequent transfers in issue.

With respect to Halpern, I noted that two of the three accounts, all of the transfers were denied, but I thought for one of the accounts all of the transfers were admitted.

MAN: We don't know.

THE COURT: Well you're seeking to enforce compliance with these subpoenas. It's the -- I think it's Account 324. Or I'm sorry, one of them is -- no, no, no, I take that back. I see an answer to Question Number 76 that the receipt of $43,096 was denied. And also in response to Request Number 81, the receipt of $63,259 was denied. Also,

the return of a check was denied.

Which of the Halpern -- were there any of the Halpern accounts where the transfers were admitted, Mr. Dexter?

MR. DEXTER: Yes, the Halpern's admitted --

THE COURT: Which one?

MR. DEXTER: -- -- had a request for admission 78, 79, 82 --

THE COURT: Let me see. 78, 79? Which account is that?

MR. DEXTER: I'm not sure which account that is.

THE COURT: Let me just see. It's Account 324, but they denied several of the receipts and they denied the receipt of the -- or the returned check.

So -- and they've also asserted that defense that I mentioned about receiving money as a conduit or in trust on some theory that it doesn't count as a receipt. So I'll compel compliance with those subpoenas.

What about Barbanel? I thought I said Barbanel had denied all the receipts and I think you told me he didn't have any other records? Is that -- is he the one?

MR. DEXTER: On the withdrawals, correct?

THE COURT: Oh, he was -- okay. So I'll compel compliance with those subpoenas.

Now with Wilentz, and I know he has this

affirmative defense, like everybody else, but he's admitted the receipt of the money and there were no deposits during the two-year period. So why do you need his or its bank records? There are two accounts, I think. One received $130,000, one received $150,000 and he's admitted that.

MS. JENSON: Your Honor, these are the responses where the defendant is also challenging the accuracy of the BLMIS bank records.

THE COURT: But you only -- I know. And that goes back to whenever the account was opened. But you're only asking about that two or three-year period.

MS. JENSON: Right.

THE COURT: And he's admitted that.

MS. JENSON: And --

THE COURT: And there's nothing that the bank will produce, in response to the subpoenas that's relevant to the -- these other transfers, which go to computing the fictitious profits.

MS. JENSON: Your Honor, if I may propose a solution to this. We learned, during preparing for the argument, that in their claim submission to the trustee, the Wilentz defendants stated that they have all of their bank records going back to the relevant time period, and they match the BLMIS records. And so we would be satisfied with the production of the defendant's records.

THE COURT: Is that acceptable, Mr. Dexter?

MR. DEXTER: I'm not sure I understand that solution. Satisfied with --

THE COURT: In other words, they're going to withdraw the subpoena to the bank on the condition that the defendant produce all his bank records. Because they understand that he has all the bank records going back, I guess, to the beginning of the account?

MS. JENSON: That's what she states in her claim submission.

MR. DEXTER: Well we have no problems reducing whatever she has. I'm not familiar with that claim submission, so I can't --

THE COURT: Why don't we hold that one in abeyance. I won't compel compliance for this -- at this point. We can adjourn it for 30 days, if you want, to see if you get the bank records. And I -- but from what you're telling me is if you get all the bank records from -- is it a him or a her?

MS. JENSON: It's a her.

THE COURT: A her. If you get all the bank records from her, then you don't need to go forward with the -- to get the same bank records from the bank.

MS. JENSON: Obviously she has a more complete set than the bank might.

THE COURT: Okay. And these are going to be unredacted records that are going to be produced.

MS. JENSON: Thank you.

THE COURT: Let's just bear that one in mind and we'll hold that one aside.

MR. SHEEHAN: Yes, Your Honor.

THE COURT: Now with respect to Shapiro -- let me deal with Roth first. You told me you're withdrawing your request for admissions in Roth and you're not going to serve request for admission in Shapiro. There may be other problems that delay the Shapiro case, I don't know, from going forward. And so that in essence you're saying whatever you represented in the past that hasn't worked for the reasons we've discussed, and on a going forward basis, you're not going to waste time or money sending requests for admissions because we'll be back in court fighting over that objection.

MR. SHEEHAN: Yes, Your Honor, with one footnote. Got to have one. Is that in both instances, Roth and Shapiro, new counsel are coming on board. All right? New counsel who -- one is -- I know we've worked with before.

THE COURT: Well do you want to adjourn those?

MR. SHEEHAN: Yeah, I would like to actually adjourn those until new counsel is on board --

THE COURT: Okay.

MR. SHEEHAN: -- and then we --

THE COURT: And then --

MR. SHEEHAN: -- can perhaps resolve it with counsel and then inform Your Honor.

THE COURT: Who's the new counsel in Roth?

MR. SHEEHAN: It's -- I don't know Roth, but --

MS. JENSON: I'm sorry --

MR. SHEEHAN: -- I think in Shapiro -- do we know?

MS. JENSON: We don't have counsel on Roth. We actually received a phone call from the defendant, Roth, yesterday. She is expecting -- she is under the impression that the motion to withdraw has already been granted. That's on your docket for today. And we will call her back after that motion to withdraw is granted.

THE COURT: Well if it's -- my question is, if it's granted, and I don't have a problem with granting it, I didn't want to do it before today and affect the timing of the resolution of all these issues.

MR. SHEEHAN: Right.

THE COURT: But if it's granted, what do you propose to do with respect to the subpoena in the Roth case?

MR. SHEEHAN: Is to talk to the new counsel and see what we could work out there.

THE COURT: All right.

MR. SHEEHAN: And if we could work something out,

then as we have, as I said earlier, with many other counsel, we may or may not need to subpoena. And the same thing may be true with Shapiro.

THE COURT: All right. Do you have any objection then to adjourning the issue of compliance in Wilentz, the four Shapiro cases and Roth for 30 days to see if this can be worked out?

MR. SHEEHAN: No problem, Your Honor.

THE COURT: Okay. Provided that the banks are on notice to maintain records, so just -- it's being adjourned and you can provide for that.

MR. SHEEHAN: Yes, Your Honor.

THE COURT: And then I'll grant -- Ms. Chaitman, I'll grant your motion on that basis to withdraw in Roth. And you can submit an order to that effect. Okay? I guess she's gone.

Mr. Dexter, you can submit an order for your firm withdrawing in Roth. I'll grant that motion.

MR. DEXTER: Yes, Your Honor.

THE COURT: All right. Then with respect to the Roman cases, Barbanel, Halpern and Saren-Lawrence, I'm granting -- I'm denying the motions to quash the subpoenas and the motions for a protective order and directing compliance, subject to the requirement that the documents produced by the banks be held in confidence pursuant to the

-- I think it's the litigation protective order of June 6th, 2011. All right?

MR. SHEEHAN: Yes, Your Honor.

THE COURT: With respect to the -- well, let's say that with respect to the motions in Roth, Shapiro and Wilentz, they'll be adjourned for a period of 30 days and we'll use that as a reporting date. When is the other date in late April when you're supposed to come back?

THE CLERK: 25th.

THE COURT: the 25th?

MAN: 27th.

THE COURT: 22nd?

MR. SHEEHAN: 27th, Your Honor, I believe.

THE COURT: Okay. Fine. Why don't we adjourn those motions to that date, for conference purposes, advise the banks they're to hold on to their records, because --

MR. SHEEHAN: We will do that. And (indiscernible) --

THE COURT: -- the matters are not resolved.

MR. SHEEHAN: Absolutely, Your Honor.

THE COURT: All right. Anything else? Oh, we have the Madoff deposition.

MS. JENSON: And I'm sorry, just so the record's clear, the motion to compel Valley National Bank to produce I --

THE COURT: Yes.

MS. JENSON: -- understand that to be granted?

THE COURT: Yes. And the motions to dismiss are denied.

MS. JENSON: Thank you.

MR. GLICKMAN: Your Honor, may I?

THE COURT: Yes, sir.

MR. GLICKMAN: Barry Glickman on behalf of Valley National Bank. Just one question in the context of the compliance. I understand that there is a protective order in place. Should we mark these documents as produced consistent with that confidentiality order?

MR. SHEEHAN: That would be fine, Your Honor.

THE COURT: Okay. Very good. And if you --

MR. GLICKMAN: Sure.

THE COURT: -- can't work it out, then you can come back.

MR. GLICKMAN: And is there a time frame on that?

THE COURT: Well, you -- how long is it going to take you to produce the record?

MR. GLICKMAN: If we could ten days, I'd appreciate that.

MR. SHEEHAN: Done.

THE COURT: It's been going on for eight years -- six years, really. All right.

MR. GLICKMAN: We can six months?

THE COURT: No.

MR. SHEEHAN: Thank you, Judge.

MS. JENSON: Thank you, Your Honor.

THE COURT: All right. Now --

MR. DEXTER: Your Honor, one thing, if I may --

THE COURT: Sure.

MR. DEXTER: -- before we proceed to the next motion? As you did in Cohmad, will you grant leave to appeal this?

THE COURT: Well I can't grant leave to appeal, only the District Court can grant leave to appeal.

MR. DEXTER: Will you allow a stay so we can seek (indiscernible)?

THE COURT: I'll grant you a 14-day stay.

MR. DEXTER: Thank you, Your Honor.

THE COURT: And apprise Mr. Glickman.

MR. GLICKMAN: Okay.

THE COURT: I'll grant you a 14-day stay, you can put that in the order. Not a stay on the dismissed -- on the motion to dismiss. Let Mr. Glickman know --

MR. DEXTER: Thank you, Your Honor.

THE COURT: -- he'll send you a copy of the order.

MR. SHEEHAN: But tell him he's got 14 days.

THE COURT: Pardon?

MR. SHEEHAN: Oh, I'm sorry. I said --

THE COURT: Get me the order today, it'll be the 14 days from the date of the entry of order of stay, then it is up to the District Court if it wants to entertain the matter.

MR. SHEEHAN: Absolutely, Your Honor.

THE COURT: How is the Cohmad matter settled? Is the Cohmad matter still pending?

MR. SHEEHAN: Yeah, well what happened was is that there was an attempt to appeal by Mr. Badway and we resolved and it we turned over the bank records in compliance with Your Honor's order.

THE COURT: Oh, all right. Okay. Could I have the Madoff deposition (indiscernible).

All right. The last matter I have on the calendar is the motion to conduct the deposition of Mr. Madoff with respect to the profit withdrawal issue.

MR. DEXTER: Yes, Your Honor. This is the customers' motion. As we've laid it out in our briefs, under the trustee shall conduct examinations by deposition or otherwise, of the debtor, for some reason that has not occurred in this case.

THE COURT: And maybe the trustees has made the determination he's not going to believe what he says?

MR. DEXTER: It seems that the trustee has made a

lot of determinations by himself. This Court has acknowledged that Mr. Madoff would be the most authoritative source of information.

THE COURT: I never said that. I never said that. I said that I thought that there must be people who worked for Madoff, and made these entries, that would know what they meant. You really think Mr. Madoff made these entries?

MR. DEXTER: He would certainly be a good individual to ask, as to who would have information about them.

THE COURT: Okay.

MR. DEXTER: Do I think Mr. Madoff would have information about these entries? Probably. There's one way to find out, and that's to have a deposition conducted.

THE COURT: One of the concerns, and this may be the only concern, I don't know, is that the deposition will not be limited to the profit withdrawal issue. And specifically, we could get into the issue of Mr. Picower. And the reason why -- the reason for that is in the declaration put in in the Aaron Blecker matter there was a paragraph relating to Mr. Picower that had nothing to do with Mr. Blecker's particular dispute. So how do we prevent that, if Mr. Madoff is deposed?

MR. DEXTER: I'm sorry, Your Honor. So you're acknowledging that you're going to proceed with granting

leave to depose --

THE COURT: I'm asking you a question. I'm asking you another hypothetical question. If I agree that you should be entitled to take the deposition, what's to prevent you from asking or eliciting information relating, not only to Picower, but to other matters affecting cases in which the parties won't be present at the deposition?

MR. DEXTER: Well all you have to do is limit -- is enter an order limiting testimony to that scope. And the customers have no intent, whatsoever, to seek any information related to Mr. Picower. The fact that there was information about him on the same declaration is just sort of a practical matter, when you're dealing with someone who's in jail and you can only get one declaration, that's totally overblown and quite frankly irrelevant. Because --

THE COURT: Well it was irrelevant when you put it into the Blecker --

MR. DEXTER: Well that --

THE COURT: -- you interjected it in the Blecker matter. Why'd you do that?

MR. DEXTER: It's just that there's one declaration.

THE COURT: But the --

MR. DEXTER: Mr. Madoff has signed one declaration. It happens to have things in it that aren't

necessarily related to this motion.

THE COURT: Okay.

MR. DEXTER: You know, it's not -- there's nothing to make of that, at all.

THE COURT: You think not?

MR. DEXTER: I don't think so.

THE COURT: All right. Let me hear from the other side.

MS. BROWN: Good morning, Your Honor. Seanna Brown on behalf of the trustee.

Your Honor, let me start with the second issue about whether or not the deposition should be limited. I just want to follow up on one thing that counsel just said, which is they have no intention of asking any questions regarding the Picower Parties.

And Judge Cottle has ruled that Ms. Chaitman is not entitled to that relief, she should not be using this proceeding as an end run around that order. And if they have no intention of asking any questions about that, they should consent to the relief that the trustee and the Picower Parties are seeking --

THE COURT: Any objection?

MS. BROWN: -- in the limiting order.

THE COURT: Any objection to the limiting language in the -- that they propose?

MR. DEXTER: Where is that language? I would need to review that language specifically. We have no objections to generally limiting the scope. I'd have to look at the specific language.

MS. BROWN: I can provide a summary of what --

THE COURT: Go ahead.

MS. BROWN: -- relief we sought. The first one is that Madoff cannot give testimony about the Picower Parties. The second point is that Ms. Chaitman cannot question him on the Picower Parties. The third point is that the transcript cannot be used in any way until appropriate redactions are made to the extent improper questions are posed, or testimony is given. And the fourth is that the transcript can only be used in the context of the profit withdrawal proceeding, and not against the Picower Parties or in any other matter in which Ms. Chaitman -- or any other matter.

THE COURT: Any objection to those conditions?

MR. DEXTER: This should really be something for Ms. Chaitman to address --

THE COURT: Well, no, no.

MR. DEXTER: -- if she's on the line.

THE COURT: This has been -- Ms. Chaitman are you on the line? Gone. She's in Barcelona.

You know, this issue was coming up today and my sense in the reply brief was that the conditions were

agreeable.

MR. DEXTER: The conditions are agreeable, that are consistent with that -- what is proposed. What I would propose is that if Your Honor is inclined to grant leave to depose Bernard Madoff, customers' consent to limits -- limitations on the scope consistent with the spirit of what's been proposed. And then we could have a few days to just sort of iron that out.

THE COURT: Iron what out? Any order that I enter would have those limitations in it.

MR. DEXTER: Well in that case, there -- our objection would be futile and --

THE COURT: (indiscernible) --

MR. DEXTER: -- we'll allow you to enter that order.

THE COURT: But I want to resolve this before I enter the order, if I do enter the order. If it can't be resolved, I won't enter the order.

Look at the conclusion in the trustee's objection, which sets forth five conditions which I think are the same five conditions of the Picower Parties' requests?

MS. RESSLER HARRIS: I think there may be a few additional ones in the Picower Parties, so --

THE COURT: Well maybe we ought to turn to the Picower Parties, we'll see.

MR. DEXTER: This is in the Picower Pretty arties' response?

MS. RESSLER HARRIS: Yes.

MR. DEXTER: Yeah, now I'm looking at. Okay.

MS. RESSLER HARRIS: It's on Page 11 of the Picower --

THE COURT: Yeah.

MS. RESSLER HARRIS: -- Parties' response.

THE COURT: There seem to be seven conditions instead of five. It's a little more specific about inquiries about Picower.

MS. RESSLER HARRIS: That's right. They're the same ones that the trustee's counsel just --

THE COURT: Well --

MS. RESSLER HARRIS: -- identified. And then in addition, we want to make sure that we -- that the Picower counsel has the opportunity to review a transcript that's been marked confidential, to make sure that there has been compliance before any use of the deposition -- of the transcript can be made.

And we want to make sure that neither the Chaitman parties nor any parties ever can use the transcript in any action to be brought against the Picower Parties or their agencies.

And finally --

THE COURT: Are you proposing the transcript first be filed under seal and then parties -- particularly the Picower Parties, because it's really their issue, although I suppose --

MS. RESSLER HARRIS: I think it's the trustee's --

THE COURT: -- although I suppose questions could be asked about a lot of cases --

MS. BROWN: Yes.

THE COURT: -- and counsel for those parties would not be present. Oh, before I forget. I think that there's one other law firm involved in profit withdrawal issue.

MS. BROWN: There is. Your Honor, it's --

THE COURT: Mr. Kirby?

MS. BROWN: -- it's Baker and McKenzie, Richard Kirby.

THE COURT: So he would be entitled, since you would presume -- or somebody might use that transcript against his clients, wouldn't he be entitled to participate in this --

MS. BROWN: We have no objection to --

THE COURT: -- or at least invited?

MS. BROWN: -- Mr. Kirby attending the deposition, seeing as he is participating in the profit withdrawal proceeding.

THE COURT: All right. Subject to the same

limitations.

MS. BROWN: Yes, Your Honor.

THE COURT: All right. The Court -- let's keep that one in mind.

MS. RESSLER HARRIS: And then Your Honor, we also want part of the limiting order, if there is one, to direct that any violations of the limiting order would result in sanctions, because --

THE COURT: That's self-evident, but it could be in the order.

MS. RESSLER HARRIS: Okay.

THE COURT: Now do you propose to take this deposition by telephone? It seems to me it's going to be a short deposition.

MR. DEXTER: No, we'd like to take it in North Carolina at the penitentiary.

THE COURT: Okay.

MS. BROWN: Your Honor, I still do want to be heard on why the deposition shouldn't go forward at all.

THE COURT: Go ahead. Go ahead.

MS. BROWN: We don't feel that the deposition should be permitted because Madoff's declaration revealed that he doesn't have personal knowledge about the profit withdrawal transactions.

THE COURT: So then it will be even a short

deposition.

MS. BROWN: True. But we don't think that he's shown that he has a -- personal knowledge about these issues. So we don't think his deposition should be permitted.

THE COURT: But how do you know unless you ask him?

MS. BROWN: I think his declaration --

THE COURT: In other words --

MS. BROWN: -- is reveal --

THE COURT: -- if this weren't Madoff and he wasn't in prison, if you wanted to know what somebody knew, you'd establish a foundation to find out what he knew.

MS. BROWN: Yes, Your Honor.

THE COURT: And I realize that the declaration submitted in the Blecker matter didn't mention profit withdrawals at all. All Mr. Madoff said was that if somebody was going to request a withdrawal, they would write a letter, I wouldn't send them money without it.

MS. BROWN: And --

THE COURT: Now I suppose that somebody could say, don't reinvest my dividends, don't send them to me, which is what the theory of the profit withdrawals were, that they were just sending the dividends from the fictitious transactions.

MS. BROWN: Yes, Your Honor.

THE COURT: But that's really a question, I guess, late at the end of the day.

MS. BROWN: Okay.

THE COURT: In other words, if he testifies, look, I don't know anything about profit withdrawals, but I know that in the absence of the record request, we wouldn't send any money (indiscernible) in that business, you know, take it for what it's worth. But we don't know what he knows.

MS. BROWN: Yeah, we just feel that his testimony is specifically contradicted by the books and records that we have.

THE COURT: Doesn't that go to the weigh, though?

MS. BROWN: It might go to the weight.

And then the second issue I wanted to raise is, that within his declaration he does testify to general broker dealer practices, which I would submit he's not an appropriate witness to discuss general broker dealer practices in the industry.

So for those reasons we don't think his deposition should go forward.

THE COURT: I guess that would go to the weight also. So very specifically, I assume he -- well maybe he could or could not testify, of his own knowledge, that BLMIS would not send money to anybody unless they first requested

it.

MS. BROWN: To the extent he has that knowledge. We think that there are other employees that were involved in the day to day workings of sending checks to customers, sending payments to customers, creating fictitious entries. And we think they would be the most -- the employees that --

THE COURT: Yeah, but --

MS. BROWN: -- are the most knowledgeable.

THE COURT: -- from what I saw from your motion to extend the schedule, those people are also convicted felons who are in prison. So --

MS. BROWN: They are. But there -- the difference between Mr. Madoff and those employees, in addition to just the one that's obvious on its face, that Mr. Madoff is on one end of the spectrum and these employees are on another, is that these employees were actually working day to day with these payments and these transactions.

THE COURT: I don't necessarily disagree with you that they're better -- they will be more knowledgeable witnesses, but I can't say that Mr. Madoff doesn't know anything about this.

MS. BROWN: Okay. Your Honor, well then we would request that you enter the limiting order that we've outlined here today.

THE COURT: Yeah, I don't -- look, I'm going to

grant the motion. I think the information is certainly relevant to the case. There are something like 91,000 of these profit withdrawals in the records. And I read both experts' reports, Calura and Greenblatt. It's a significant issue. The trustee has attempted to reconstruct what occurred, and to a large extent, extrapolate the results of the more recent records to earlier periods, which I guess is the problem. You wouldn't even be having this discussion if we were just talking about this last ten years, I don't know. But for instance, in Mr. Blecker's case, all of his deposits and supposedly withdrawals occurred more than ten years ago when there were apparently no bank records.

MS. BROWN: That's correct, Your Honor.

THE COURT: So I'll allow it, consistent with the limiting provisions which are in the Picower opposition and I'll further direct that the transcript be held confidentially for some period of time --

MS. BROWN: Okay.

THE COURT: -- since there's a lot of public interest, I guess in this. Some period of time to make -- to give the parties an opportunity to make redaction requests.

MS. RESSLER HARRIS: Yes.

THE COURT: Let's say 30 days after it's received or actually I think ECM -- ECF gives you 90 days, doesn't

it?

MS. RESSLER HARRIS: I --

MS. BROWN: I believe so.

THE COURT: How will that interfere with the progress of the litigation on this issue, if it's a full 90 days?

MS. BROWN: The profit withdrawal issue?

THE COURT: No, let's split the difference, let's make it 60 days.

MS. RESSLER HARRIS: Can -- Your Honor, can we say that or until the issues are resolved by the Court? Because if the 30-day period expires, but the issues about confidentiality or redaction haven't been addressed --

THE COURT: Oh, yes. The later of --

MS. RESSLER HARRIS: Yes.

THE COURT: -- provided that a redaction request is made within 30 days, then the matter will remain confidential until those issues are resolved, certainly.

MS. RESSLER HARRIS: And those requests should be made to the Court under seal, I assume. Otherwise you defeat the purpose of the confidentiality.

THE COURT: I see. Yeah. Any objection to that, Mr. Dexter? Well how -- the other side has to know also, because they have to be able to respond.

MS. RESSLER HARRIS: They would be privy to the

motion, but they would be subject to the same confidentiality and sealing requirements.

THE COURT: All right. What if you do this, why don't you settle a proposed order, a notice with the various restrictions, limitations we've discussed and that'll give Ms. Chaitman and Mr. Dexter an opportunity to respond. If there are any disputes, then we can work them out.

MS. BROWN: And so just to clarify, the redaction request needs to be made within 30 days?

THE COURT: No, I said 60. I was laboring between 90 and 30, so I made it 60. Requests have to be made within 60 days and then the transcript will continue to remain confidential, pending the resolution of those redaction requests. The redaction requests will be filed under seal, but they will be shared with counsel who will hold them in confidence until -- you know, and then you deal with how those requests, when, ands and if the requests are resolved.

MS. BROWN: Okay.

THE COURT: All right?

MS. BROWN: Thank you, Your Honor.

THE COURT: Okay. Anything else?

MS. RESSLER HARRIS: Thank you.

MR. DEXTER: Just so we're clear. A settlement of a proposed order is going to be circulated to determine the -- all the terms that we've just set?

THE COURT: You better settle it because they're not in a hurry to have the deposition taken.

MR. DEXTER: No, but I'm not clear on whether you ruled that the limiting orders proposed have been entered, or whether that's going to be something that we're going to have an opportunity --

THE COURT: No, no.

MR. DEXTER: -- to respond to.

THE COURT: There are going to be the limitations, consistent with what the Picower Parties proposed, since I think they were broader than what the trustee proposed. And they're the ones who really had the ax to grind on this one. If you object to the phraseology, they put something in, you'll certainly have an opportunity to object. But my understanding, from you reply, is that you didn't really object to the limitations that were proposed, anyway.

MR. DEXTER: All right. If we could, maybe may I propose we have an opportunity to submit a reply to the scope as proposed and it could just be --

THE COURT: No, I just ruled --

MR. DEXTER: -- decided on (indiscernible)?

THE COURT: -- I just ruled on it.

MR. DEXTER: Okay.

THE COURT: You had the opportunity. You -- did you read your papers?

MR. DEXTER: Yes. And --

THE COURT: And all your -- will you please number your pages when you submit your pleadings. You didn't number the briefs in the -- on the motion to compel.

MS. BROWN: Yes, Your Honor.

Your Honor, I just want to clarify, the Picower Parties and the trustee can settle the order or --

THE COURT: If you want.

MS. BROWN: Okay.

THE COURT: If the order's never signed then --

MS. BROWN: It was a little unclear to us.

THE COURT: -- it's not going to be --

MS. BROWN: All right.

THE COURT: -- anybody can settle the order, I just thought that --

MS. RESSLER HARRIS: We can do that.

MS. BROWN: Your Honor, we're happy to settle the order.

THE COURT: Okay.

MS. RESSLER HARRIS: Yes. We'll work together.

THE COURT: All right. Let me just -- remember that Mr. Kirby can participate.

MS. BROWN: Yes, Your Honor.

THE COURT: You know what bothers me about the response, looking at it again, the reply, after you accuse

the Picower Parties of paranoia, notwithstanding Mr. -- the declaration submitted in the Blecker case, which included information about Picower, the last paragraph says, in any event, you respectfully asked the Court to set the limitations on the deposition of Madoff, bearing in mind the relevance of his testimony to many of the adversary proceedings and the practical difficulties of deposing him while he's in prison. How can you use this deposition in adversary proceedings if the other parties to the adversary proceedings are not -- may not be present?

MR. DEXTER: Well in some cases the parties are the same.

THE COURT: Well to the extent they're the same, then they're present.

MR. DEXTER: I think the point is that we should just take a couple days to clarify what exactly the scope is. And the point here is that if we're going down there, if we're going to North Carolina, it should be clear what exactly the scope is.

THE COURT: Let me ask -- let me raise a different issue, or a related issue. Let's suppose that in course of this profit withdrawal limitation I conclude you're wrong, where you haven't proved what you say you're going to prove. Couldn't that be used in subsequent transfer -- not -- in fraudulent transfer litigation against you to require you to

recompute the amount of principle that was withdrawn?

MS. BROWN: I mean it would be --

THE COURT: In other words it would -- the profit withdrawal issue has ramifications beyond the claim allowance procedures, because I assume that the trustee followed the same procedure with respect to adversary proceedings where he's seeking to recover either fictitious profits or all the principle.

MS. BROWN: Yes, Your Honor. I mean we've always described it as two sides of the same coin. The way that you reach each calculation is based on the same --

THE COURT: I'm not so sure --

MS. BROWN: -- transaction.

THE COURT: -- it is. I'll tell you why. And I raised this before. There may be a difference between the trustee's computing withdrawals for the purpose of SIPA, where he has to be personally satisfied from the books and records and the way of computing withdrawals and fraudulent transaction litigation which SIPA has nothing to do with, it's just a fraudulent transfer case.

MS. BROWN: Your Honor, I think that goes to the -- whose burden it is. I don't think it goes to the actual calculation. And under SIPA it's the customer's burden to substantiate their claims, similar to any preferred status in any bankruptcy.

THE COURT: I guess I'm raising a different issue.

MS. BROWN: Okay.

THE COURT: Suppose the trustee says, you know what, I just don't believe Madoff, I don't believe Bongiorno, depending on what she says about this, or Crupi, depending on what she says about this, I believe my expert. And based on my expert's analysis and the extrapolation of that analysis, I believe that PW represents an actual withdrawal from the account.

Is that enough, even if I think that maybe Madoff, let's use an example, Bongiorno and Crupi are right, in other words, as long as the trustee reasonably relies on the information he has, does it matter if he's right? Because he would have to be in a fraudulent transfer litigation where his reasonable reliance is (indiscernible) really an issue.

MS. BROWN: Well I think the Second Circuit case law on the trustee's duties and obligations gives the trustee some -- wide latitude in determining that equity, and it may not be the same burden in a fraudulent transfer action. But I do think that goes to burdens and not the underlying calculation.

THE COURT: I'm not so sure, but we'll see.

All right. You can settle an order.

MS. BROWN: Thank you, Your Honor.

MS. RESSLER HARRIS: Thank you.

THE COURT: Thank you.

MR. DEXTER: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 12:49 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Digitally signed by Sonya Ledanski Hyde
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